

## CCS HCS SB 628 -- JUDICIAL PROCEDURES

This bill changes the laws regarding judicial procedures.

### JOINT COMMITTEE ON CHILD ABUSE AND NEGLECT (Section 21.771, RSMo)

The Joint Committee on Child Abuse and Neglect is established composed of seven members of the House of Representatives appointed by the Speaker and Minority Floor Leader and seven members of the Senate appointed by the President Pro Tem and the Minority Floor Leader.

The joint committee is required to:

- (1) Make a continuing study and analysis of the state child abuse and neglect reporting and investigation system;
- (2) Devise a plan for improving the structured decision making regarding the removal of a child from a home;
- (3) Determine the additional personnel and resources necessary to adequately protect children in this state and improve their welfare and the welfare of families;
- (4) Address the need for additional foster care homes and to improve the quality of care provided to abused and neglected children in the custody of the state;
- (5) Determine from its study and analysis the need for changes in statutory law;
- (6) Make any recommendation to the General Assembly necessary to provide adequate protection for the children of our state;
- (7) Meet within 30 days after its creation and select a chairperson and a vice chairperson and meet quarterly thereafter; and
- (8) Compile a full report of its activities for submission to the General Assembly by January 15 of each year that the General Assembly convenes in regular session.

These provisions expire January 15, 2018.

### DRIVER'S REGISTRATION AND MOTOR VEHICLE RECORDS (Section 32.056)

Currently, the Department of Revenue is prohibited from releasing the home address or any other information contained in the department's motor vehicle or driver registration records on specified groups of individuals. The bill adds any state or

federal judge or his or her immediate family members to those groups and specifies that the department cannot release any information that identifies any vehicle owned or leased by the specified groups in its records with specified exceptions.

#### SHERIFF'S CHARGES IN CIVIL CASES (Section 57.280)

Currently, charges of up to \$50,000 in any year that are collected by a sheriff in civil cases for service of a summons, writ, subpoena, or other court order must be held in a separate fund established by the county treasurer to be expended at the discretion of the sheriff for the procurement of services and equipment to support the operation of the sheriff's office. Land sale proceeds are not to be directed into the fund, and any proceeds in excess of \$50,000 must be placed to the credit of the general revenue fund of the county. The bill allows land sale proceeds to be placed in the fund subject to the \$50,000 cap.

#### ADMINISTRATIVE FINES OR COSTS (Section 67.136)

Any city or county that has established a municipal court is allowed to utilize collection agencies to collect any court or administrative fines or costs associated with a finding of guilt for a criminal offense or an infraction or entry of a civil judgment that are legally owned, enforceable, past due, and uncollected.

#### ECONOMIC DEVELOPMENT TAX BOARDS (Section 67.1305)

Currently, an economic development tax board established by a city must consist of five members. The bill specifies that a board must consist of at least five members but may be increased to nine. The number of members must be designated in the order or ordinance imposing the sales tax authorized under Section 67.1305. One member of a five-member board or two members of a nine-member board must be appointed by the school districts within any economic development plan or the area funded by the sales tax. Three members of a five-member board or five members of a nine-member board must be appointed by the chief elected officer of the city with the consent of the majority of its governing body. One member of a five-member board or two members of a nine-member board must be appointed by the governing body of the county in which the city is located. If a board is already in existence on August 28, 2012, any increase in the number of members must be designated in an order or ordinance. The bill specifies the terms and election cycle for appointing the additional members.

#### ASSOCIATE CIRCUIT JUDGES (Section 67.2010)

Associate circuit judges in Greene County are authorized to hear and determine county traffic ordinance violations. Currently, associate circuit judges in only Cass County are authorized to do this. Also, associate circuit judges in both counties are authorized to hear and determine any violation of its county's ordinances adopted pursuant to statute.

#### BLIGHT RESTRICTIONS (Section 135.953)

The bill specifies that no finding of blight under Chapter 135 can be used to meet the conditions for blight under any other state statute.

#### TRAFFICKING DRUGS (Sections 195.222 and 195.223)

Currently, a person commits the crime of trafficking drugs in the first degree if he or she distributes, delivers, manufactures, produces or attempts to distribute, deliver, manufacture, or produce more than two grams of crack cocaine. The bill raises the quantity required to eight grams. If the quantity involved is more than eight grams but less than 24 grams, the person must be sentenced to the authorized term of imprisonment for a class A felony. If the quantity is 24 grams or more, the person must be sentenced to the authorized term of imprisonment for a class A felony with no probation or parole.

Currently, a person commits the crime of trafficking drugs in the second degree if he or she possesses or has under his or her control, purchases or attempts to purchase, or brings into this state more than two grams of crack cocaine. The bill raises the quantity required to eight grams. If the quantity involved is more than eight grams but less than 24 grams, the person will be guilty of a class B felony. If the quantity is 24 grams or more, the person will be guilty of a class A felony.

#### JUVENILE COURT JURISDICTION (Section 211.031)

The age at which the juvenile court will have jurisdiction over a child involving a state or local traffic violation is changed from up to 15 1/2 years of age to up to 15 years of age.

#### PUBLIC SERVICE COMMISSION APPEALS (Section 386.510)

When a party files a notice of appeal on a Missouri Public Service Commission order or decision, the commission must forward it to the appellate court with the territorial jurisdiction over the county where the hearing was held or in which the commission has its principal office.

#### PERFECTION OF SECURITY INTERESTS (Section 400.9-311)

Currently, a person in the business of selling or leasing goods is not required to file a financing statement on property held as inventory to perfect a security interest in the property. The bill requires a person in the business of leasing goods to file the statement.

#### TERMINATION OF PARENTAL RIGHTS (Section 452.374)

A court is required to issue an automatic stay of any paternity proceeding involving a child and the alleged putative father if criminal charges alleging an act of rape are brought against the putative father of a child conceived as a result of the rape. The stay must not be lifted until there is a final disposition of the criminal charges. In any future custody proceeding, any denial of visitation under these provisions cannot be used against the mother of the child in determining which parent is more likely to allow meaningful contact with the other parent.

#### QUALIFIED SPOUSAL TRUSTS (Section 456.950)

The bill allows a trust to be considered a qualified spousal trust if the trust consists of property held in one trust for both spouses, property held in two shares in one trust for each spouse, or both. Currently, a trust can be considered a qualified spousal trust if the property is held in one trust or the property is held in two separate shares of one trust.

#### MISSOURI UNIFORM TRUST CODE (Section 456.8-808)

The bill changes the laws regarding the Missouri Uniform Trust Code by allowing a trust instrument to appoint a trust protector who is expressly granted one or more powers over the trust in the trust instrument. The bill:

- (1) Specifies the express powers that may be granted to a trust protector;
- (2) Specifies when a trust protector has no power to modify a trust;
- (3) Specifies that the trust protector must not exercise a power in a way that would result in a taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the trust protector's gross estate for federal estate tax purposes;
- (4) Requires a trust protector to act in a fiduciary capacity in carrying out the powers in the trust instrument. A trust protector is not a trustee, is not liable or accountable as a trustee when performing or declining to perform the express powers given in the trust instrument, and is not liable for the

acts or omissions of any fiduciary or beneficiary under the trust instrument;

(5) Exonerates a trust protector from all liability for his or her acts or omissions, or arising from any exercise or non-exercise of the express powers conferred in the trust instrument, unless it is established by a preponderance of the evidence that the acts or omissions were done or omitted in breach of the protector's duty, in bad faith, or with reckless indifference;

(6) Authorizes a trust protector to exercise the express powers granted in the trust instrument at any time and from time to time after the trust protector acquires knowledge of his or her appointment as trust protector and of the powers granted;

(7) Allows the trust protector to receive from the assets of the trust reasonable compensation and reimbursement of reasonable costs and expenses incurred in determining whether to carry out and in carrying out the express powers given to him or her in the trust instrument;

(8) Allows the trust protector to receive from the assets of the trust reimbursement of the reasonable costs and expenses, including attorney fees, of defending any claim made against the trust protector arising from his or her acts or omissions while acting in that capacity unless it is established by clear and convincing evidence that the protector was acting in bad faith or with reckless indifference;

(9) Prohibits the trust protector from exercising the express powers granted in the trust instrument for his or her own personal benefit;

(10) Specifies that a trustee must not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of the written direction of the trust protector or the failure of the trust protector to provide consent, except in the case of bad faith or reckless indifference on the part of the trustee;

(11) Specifies when the trust protector is entitled to receive information regarding the administration of the trust;

(12) Allows a trust protector to resign by giving 30 days' written notice to the trustee and any successor trust protector;

(13) Grants any successor trust protector, if any, all the powers expressly granted in the trust instrument to the resigning trust protector unless those powers are expressly modified for the successor trust protector; and

(14) Specifies that a trust protector of a trust having its principal place of administration in Missouri submits personally to the jurisdiction of the courts of Missouri during any period that the principal place of administration of the trust is located in this state and the trust protector is serving in that capacity.

#### STATEWIDE COURT AUTOMATION FUND (Section 476.055)

Currently, any unexpended balance remaining in the Statewide Court Automation Fund on September 1, 2013, must be transferred to general revenue. The bill extends that date to September 1, 2018.

Currently, the provisions regarding the fee assessed in certain court cases that is collected and deposited into the fund expire on September 1, 2013. The bill extends the expiration date to September 1, 2018.

Currently, the Court Automation Committee is required to complete its duties prior to September 1, 2015. The bill extends that date to prior to September 1, 2020.

#### ADMINISTRATIVE ADJUDICATION SYSTEM (Section 479.011)

The bill allows the City of Springfield to establish an administrative adjudication system.

#### MUNICIPAL ORDINANCE VIOLATIONS (Section 479.040)

Currently, a city, town, or village with less than 400,000 residents can choose to have violations of its municipal ordinances heard and determined by a county municipal court or an associate circuit court, and after the choice is made, all municipal ordinance violations will be heard by that court. The bill authorizes a city, town, or village to elect to have violations involving an accused with special needs due to mental disorder or mental illness or whose special needs, circumstances, and charges cannot adequately be accommodated by the municipal court to be heard and determined by the associate circuit court or county municipal court. The associate circuit court or county municipal court must have established specialized dockets or courts to provide adequate accommodations and resources for specifically handling these matters and must accept the transfer by consent of the presiding judge or by county contract.

#### ST. LOUIS CITY CIRCUIT CLERK (Section 483.015)

Currently, the circuit clerk in the 22nd Judicial Circuit for the City of St. Louis is elected by the qualified voters of the city.

The bill requires him or her to be appointed by a majority of the circuit judges and associate circuit judges of the circuit court, en banc. The clerk will be removable for cause by a majority of the circuit judges and associate judges of the circuit, en banc, in accordance with Supreme Court administrative rules governing court personnel. The elected circuit clerk who is holding office when these provisions become effective must continue to hold office for the duration of his or her elected term.

#### INMATE SECURITY FUND (Section 488.5026)

Moneys in the Inmate Security Fund are to be used to acquire and develop biometric verification systems and information sharing to ensure that inmates, prisoners, or detainees in a holding cell facility or other detention facility or area that holds persons detained only for a shorter period of time after arrest or after being formally charged can be properly identified upon booking and tracked within the local law enforcement administration system, criminal justice administration system, or the local jail system. Currently, the moneys are to be used to develop biometric verification systems to ensure that inmates can be properly identified and tracked within the local jail system.

#### SEXUAL OFFENSES (Section 488.5375)

The court is allowed to order a defendant, upon a plea of guilty or a finding of guilt for a felony sexual offense in which a computer, cellular telephone, or other electronic devices were seized, to reimburse the state or local law enforcement agency for the reasonable costs incurred in the examination of the seized items.

#### VULNERABLE PERSONS (Section 491.075)

The bill allows the statement of a vulnerable person to be admissible as evidence in a criminal proceeding in specified criminal cases as is now allowed for a child under 14 years of age. It also repeals the requirement that the offense must be performed with or on a child.

#### CONDEMNATION PROCEEDINGS (Sections 508.050 and 523.010)

Suits in inverse condemnation or involving dangerous conditions of public property against a municipal corporation established under Article VI, Section 30(a) of the Missouri Constitution must be brought only in the county where the land or any part of the land lies.

#### PROPERTY EXEMPT FROM ATTACHMENT (Sections 513.430 and 513.440)

Currently, any motor vehicle with a value of less than \$3,000 is exempt from execution or attachment. The bill requires that all motor vehicles owned by a debtor be considered together, and only if their aggregate value is less than \$3,000 will they be exempt.

Currently, any mobile home used as the principal residence but not on or attached to real property in which the debtor has a fee interest of \$5,000 or less is exempt from attachment and execution. The bill specifies that a mobile home used as the principal residence but not attached to real property in which the debtor has a fee interest of \$5,000 or less is exempt.

The exemption for a local public assistance benefit is revised to include any public assistance benefit.

Currently, each head of a family may exempt from attachment \$350 for each of the person's unmarried dependent children under 18 years of age. The bill allows the exemption for each dependent child under 21 years of age.

The bill changes the provision that will apply when determining whether certain funds are fraudulent and must not be held exempt from a bankruptcy proceeding.

#### FEDERAL SEIZURE PROCEEDS (Section 513.653)

Currently, a law enforcement agency involved in using the federal forfeiture system under federal law is required each fiscal year to acquire an independent audit of the federal seizures and proceeds therefrom and provide the audit to its governing body, the Department of Public Safety, and the Office of the State Auditor. The bill repeals the audit requirement and requires the law enforcement agency to file by January 31 an annual report with the department and the auditor's office regarding federal seizures and proceeds for the previous year. The information that must be included in the report is specified.

#### LANDOWNER LIABILITY TO TRESPASSERS (Sections 537.345, 537.346, and 537.351)

The bill changes the laws regarding a landowner's liability as it applies to an individual trespassing on the owner's land by:

(1) Defining "trespasser," as it applies to these provisions, as any person who enters on the property of another without permission and without an invitation, express or implied, regardless of whether actual notice of trespass was given or the land was posted with signs or purple markings in accordance with Sections 569.140 and 569.145; and



(2) Specifying that a possessor of real property owes no duty of care to a trespasser except to refrain from harming the trespasser by an intentional, willful, or wanton act, and that he or she may use justifiable force to repel a criminal trespasser. However, a possessor of real property may be subject to liability for physical injury or death to a trespasser in specified situations, including if the trespasser is a child who is harmed by a dangerous artificial condition on the land, the possessor knew or should have known that trespassers consistently intrude upon a limited area of the land where the trespasser was harmed by a dangerous artificial condition on the land, or the possessor knew of the trespasser's presence on the land and failed to exercise ordinary care as to active operations carried out on the land.

#### CONDUCT AT PUBLIC MEETINGS (Section 537.528)

Currently, any action seeking monetary damage against a person for conduct or speech at a public hearing or meeting is subject to a special motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment so it can be considered on an expedited basis to prevent the unnecessary expense of litigation. The bill allows any action against a person for conduct or speech at a public hearing or meeting to be subject to these special motions.

#### UNCLAIMED SEIZED PROPERTY (Section 542.301)

The bill specifies that computers, computer equipment, computer software and hardware, cellular telephones, or other devices capable of accessing the Internet that are used by the owner or with the owner's consent as a means for committing felonies with certain exceptions or for which the possession of which is an offense or that has been used to distribute or used as a means of storage of anything for which the possession is an offense must be forfeited to the state.

Upon a court order, a law enforcement agency in possession of computers, computer equipment, computer software and hardware, cellular telephones, or other devices capable of accessing the Internet or other devices used in the acquisition, possession, or distribution of child pornography or obscene material is allowed to retain possession of the property and convert it to the use of the agency for use in criminal investigations.

#### SENTENCING ADVISORY COMMISSION (Section 558.019)

The bill repeals the provision requiring the Sentencing Advisory Commission to revise its recommended sentences every two years and specifies that the provisions regarding the commission cannot

be construed to allow the commission to issue recommended sentences in specific cases pending in the courts of this state.

#### DOMESTIC ASSAULT (Sections 565.072, 565.073, and 565.074)

The crime of domestic assault in the first, second, or third degree is revised to include an act involving a child who is a member of the family or household and to remove an act involving an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the offender.

#### SEXUAL MISCONDUCT INVOLVING A CHILD (Section 566.083)

The crime of sexual misconduct involving a child is revised to include when a person knowingly coerces or induces a child who is known by the person to be younger than 15 years of age to expose a female child's breasts through the Internet or other electronic means for the purpose of arousing or gratifying the sexual desire of any person, including the child.

#### ABUSE OR NEGLECT OF A CHILD (Section 568.060)

The bill repeals the provisions regarding the crime of abuse of a child and establishes the crime of abuse or neglect of a child by:

(1) Defining "abuse" as the infliction of physical, sexual, or mental injury against a child by any person 18 years of age or older. Abuse does not include injury inflicted on a child by accidental means by a person with care, custody, or control of a child or discipline of a child by a person with care, custody, or control of the child, including spanking, in a reasonable manner;

(2) Defining "abusive head trauma" as a serious physical injury to the head or brain caused by any means, including but not limited to shaking, jerking, pushing, pulling, slamming, hitting, or kicking;

(3) Defining "mental injury" as an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his or her normal range of performance or behavior;

(4) Defining "neglect" as the failure of those responsible for the care, custody, and control of a child under 18 years of age to provide the care reasonable and necessary to maintain the physical and mental health of the child, when the failure presents a substantial probability that death, physical injury, or sexual injury would result;

(5) Defining "physical injury" as physical pain, illness, or any impairment of physical condition including, but not limited to, bruising, lacerations, hematomas, welts, or permanent or temporary disfigurement and impairment of any bodily function or organ;

(6) Defining "serious emotional injury" as an injury that creates a substantial risk of medical or psychological damage, manifested by impairment of a behavioral, cognitive, or physical condition. Serious emotional injury must be established by the testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty; and

(7) Defining "serious physical injury" as a physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

A person commits the offense of abuse or neglect of a child if:

(1) He or she knowingly causes a child under 18 years of age to suffer physical or mental injury as a result of abuse or neglect or to be placed in a situation in which the child may suffer physical or mental injury as the result of abuse or neglect; or

(2) He or she recklessly causes a child under 18 years of age to suffer from abusive head trauma.

A person does not commit the offense of abuse or neglect of a child solely by delivering or allowing the delivery of a child to a provider of emergency services.

The offense of abuse or neglect of a child is a class C felony with no eligibility for probation or parole until the defendant has served at least one year of his or her sentence. If a defendant has previously been found guilty of the abuse or neglect of a child or the injury inflicted on the child is a serious emotional or physical injury, the crime is a class B felony with no eligibility for probation or parole until the defendant has served at least five years of his or her sentence.

The abuse or neglect of a child is a class A felony with no eligibility for probation or parole until the defendant has served at least 15 years of his or her sentence if:

(1) The injury to the child is a serious emotional injury or a serious physical injury;

(2) The child is younger than 14 years of age; and

(3) The injury to the child is the result of sexual abuse as defined in Section 566.100 or sexual exploitation of a minor as defined in Section 573.023.

A person suspected of abuse or neglect of a child may be referred to an appropriate public or private agency for treatment or counseling by the circuit or prosecuting attorney as long as the agency has consented to taking the referral. The referral cannot limit the discretion of the circuit or prosecuting attorney to prosecute a person who has been referred for treatment or counseling.

Discipline, including spanking that is administered in a reasonable manner, cannot be construed to be abuse under these provisions.

#### FIRST DEGREE PROPERTY DAMAGE (Section 569.100)

The bill revises the crime of property damage in the first degree to include when a person knowingly damages a motor vehicle of another while making entry into the vehicle for the purpose of committing the crime of stealing or the damage occurs while committing the crime of stealing within the vehicle. Anyone who commits this crime will be guilty of a class C felony unless it is a second or subsequent violation, in which case he or she will be guilty of a class B felony.

#### AIRPORT AUTHORITY (Section 1)

The bill allows the fiscal body of one or more eligible entities, acting individually or jointly, to establish an airport authority by adopting an ordinance or a resolution in favor of the establishment of an airport authority. The airport authority has jurisdiction over a district with boundaries coterminous with the jurisdictional boundaries of the entity or entities adopting the ordinance or resolution. The authority is required to have a name that includes the words "airport authority."

#### JOINT COMMITTEE ON THE MISSOURI CRIMINAL CODE (Section 2)

The Joint Committee on the Missouri Criminal Code, as established by Senate Concurrent Resolution 28, must evaluate the removal of offenses from the sexual offender registry that do not jeopardize public safety or do not contribute to the public's assessment of risk associated with offenders.